



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

Joseph W. Reardon
Assistant Commissioner
for Consumer Protection

Douglas Meckes, DVM
State Veterinarian

October 7, 2020

Melissa Lefler
Owner
Puppy Planet of Lake Norman
896 Dove Court
Denver, North Carolina 28037

NOTICE of CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT for VIOLATIONS of N.C. GENERAL STATUTE (N.C.G.S.) § 19A-28 and TITLE 02 N.C. ADMINISTRATIVE CODE (NCAC) CHAPTER 52J SECTIONS .0102(1); .0103; .0204(b); .0208; and .0210(c).

AWS-CP-2020-5

Facility: Puppy Planet of Lake Norman
Unlicensed Boarding Kennel

Dear Ms. Lefler:

Pursuant to NCGS § 19A-40, I am issuing this notice that you, as owner of Puppy Planet of Lake Norman, are hereby assessed a civil penalty of \$2,650.00 as provided in the enclosed Notice of Violations.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N.C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to NCGS § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by NCGS § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings ("OAH") within 60 days from the date of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00). Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000.

You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Norris', followed by the initials 'DVM, MS'.

Patricia Norris, DVM, MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, State Veterinarian
Tina Hlabse, General Counsel, NCDA&CS
Joe Reardon, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF

PUPPY PLANET, LLC
DBA PUPPY PLANET OF
LAKE NORMAN

) NOTICE OF VIOLATIONS and
) ASSESSMENT of CIVIL PENALTY
) for VIOLATIONS of 02 N.C. GENERAL
) STATUTE ("N.C.G.S.") § 19A-28 and
) TITLE 02 ADMINISTRATIVE CODE
) ("NCAC") CHAPTER 52J SECTIONS
) .0102(1); .0103; .0204(b); .0208 and
) .0210(c).

Acting pursuant to NCGS § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. On March 10, 2020, AWS Animal Health Technician Jay Blatche ("Inspector Blatche") attempted to conduct a facility compliance inspection ("FCI") at the boarding kennel named American Dog Company, License Number 11027, located at 896 Dove Court, Denver, NC. The American Dog Company was owned and operated by Melissa Lefler and two other persons. Upon arrival, Inspector Blatche was informed that the kennel known as American Dog Company had closed. He was also informed by Melissa Lefler that she was the sole owner and operator of the boarding kennel named Puppy Planet of Lake Norman ("the kennel"), currently in operation at 896 Dove Court, Denver, NC.
2. At that time Inspector Blatche informed Ms. Lefler that she was operating an unlicensed boarding kennel and that she must immediately submit an application and fee for a boarding kennel license. Inspector Blatche conducted the FCI so that the application could be processed once it was received by AWS. At the completion of the FCI, Inspector Blatche reiterated to Ms. Lefler the need to immediately submit an application for licensure. As of the date of this Notice of Civil Penalty, October 7, 2020, AWS has not received an application for the renewal of the boarding kennel license for this kennel.
3. On September 23, 2020, AWS was made aware of a dog attack incident at the kennel resulting in life threatening injuries to a young dog. Based on this information, AWS opened an investigation into the incident.
4. The findings of the investigation include:
 - a. On September 22, 2020, a young dog named Luke was left for boarding at the facility at approximately 7:15 AM. The owner of the kennel placed Luke in one of the outside play areas and left the area.
 - b. At 7:30 AM, the kennel owner returned to the area to find Luke being attacked by a dog named Deacon. The kennel owner said that it took approximately 5 minutes to separate the two dogs.
 - c. The kennel owner stated that upon her return to the play area, she realized she had left the gate open to Luke's play area and that Luke must have wandered out of that area and opened the

- gate to the play area where Deacon was housed.
- d. Despite the severe fight and subsequent life-threatening injuries to Luke, the kennel owner did not seek veterinary care for Luke until 1:00 PM the afternoon of September 22, 2020. When asked why she did not immediately seek veterinary care for the injured dog, she responded that she was the only person working that day and she couldn't leave the kennel unattended.
 - e. On September 24, 2020, Inspector Blatche conducted the site visit portion of the investigation. Inspector Blatche requested to see the immunization records and other records required to be maintained by the kennel and produced upon request pursuant to 02 NCAC 52J .0102 and .0103. The kennel owner could not produce any of these records for Luke or Deacon. Her explanation was that she is the only person working at the kennel on Tuesdays and Thursdays and this incident happened on Tuesday, September 22, 2020.
 - f. A review of the relevant kennel records showed that Luke had boarded at the kennel during the previous week and that the required records for that visit were also not available.
 - g. During the September 24, 2020 site visit, Inspector Blatche noted that the sign-in/out sheet required by 02 NCAC 52J .0102 was blank despite the presence of 1-2 dogs that had arrived for day boarding services.
 - h. Inspector Blatche noted that the fencing separating the play areas in the back were very flimsy and, in some areas, secured only by bungee cords. He noted that he easily pushed the fencing open and therefore, it was reasonable to believe that a dog could as well.

CONCLUSIONS

To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. Based on the findings of this investigation, AWS concludes that the kennel violated the following provisions:

N.C.G.S § 19A-28 for operating a boarding kennel without a license granted by the AWS Director to operate such an establishment;

02 NCAC 52J .0102(1) for failing to maintain records of the name and address of the owners, date of entry, and description of the animal(s);

02 NCAC 52J .0103 for failing to make all required records available upon request;

02 NCAC 52J .0204(b) for failing to provide structurally sound primary enclosures and to maintain these primary enclosures in a manner to prevent injury to animals and keep other animals out; and

02 NCAC 52J .0208 for failing to have a sufficient number of employees to maintain the prescribed level of husbandry practices. This deficient of employees directly impacted the length of suffering of the injured dog and the ability of the facility to maintain the required level of record keeping;

02 NCAC 52J .0210(c) for failing to provide veterinary care to an injured animal. This animal suffered life threatening injuries while in the care of the kennel and the kennel failed to provide veterinary care to the injured animal in a timely fashion thereby causing unnecessary suffering of the dog.

(See Appendix for text of referenced General Statutes and Administrative Code)

CIVIL PENALTIES

As required by NCGS § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, you, individually as owner and operator of Puppy Planet of Lake Norman, are hereby assessed a civil penalty for the following violations:

\$500.00 for violation of N.C.G.S. § 19A-28 for operating a boarding kennel without a license granted by the AWS Director to operate such an establishment;

\$200.00 for violation of 02 NCAC 52J .0102(1) for failing to maintain records of the name and address of the owners, date of entry, and description of the animal(s);

\$200.00 for violation of 02 NCAC 52J .0103 for failing to make all required records available upon request;

\$500.00 for violation of 02 NCAC 52J .0204(b) for failing to provide structurally sound primary enclosures and to maintain these primary enclosures in a manner to prevent injury to animals and keep other animals out;

\$250.00 for violation of 02 NCAC 52J .0208 for failing to have a sufficient number of employees to maintain the prescribed level of husbandry practices. This deficient of employees directly impacted the length of suffering of the injured dog and the ability of the facility to maintain the required level of record keeping; and

\$1,000.00 for violation of 02 NCAC 52J .0210(c) for failing to provide veterinary care to an injured animal. This animal suffered life threatening injuries while in the care of the kennel and the kennel failed to provide veterinary care to the injured animal in a timely fashion thereby causing unnecessary suffering of the dog.

\$2,650.00 TOTAL AMOUNT ASSESSED

Continued or future violation of the statutes or regulations referenced in this letter will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's license pursuant to NCGS § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under NCGS § 19A-40.

October 7, 2020

Date

Patricia Norris, DVM, MS

Patricia Norris, DVM, MS
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be seventy-five dollars (\$75.00) for each license period or part thereof beginning with the first day of the fiscal year.

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the

violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect.

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

02 NCAC 52J .0102 RECORDS; BOARDING KENNELS

Operators of boarding kennels shall maintain records of all dogs and cats showing the following:

- (1) name and address of owner or person responsible for animal, the date of entry and signature and address of individual to whom animal is released and the date of release;
- (2) description of animal including breed, sex, age and color marking; and
- (3) veterinary care provided while boarded, which shall include date, times, description of medication (including name and dosage) and initials of person administering product or procedure.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.

02 NCAC 52J .0103 INSPECTION OF RECORDS

All operators of animal shelters, pet shops, boarding kennels, public auctions, and persons operating as dealers shall make all required records available to the director or his authorized representative on request, during the business and cleaning hours listed on the license application. The operator must be able to match each animal to its record upon request. Records shall be maintained for a period of one year after the animal is released.

History Note: Authority G.S. 19A-24; 19A-25; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(b) Primary enclosures for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out. Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, urn about freely, and to easily stand, sit, or lie in a natural position. The height of a primary enclosure other than a cage shall be no less than five feet. All enclosures shall be constructed to prevent the escape of animals.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0208 EMPLOYEES

A sufficient number of employees shall be utilized to maintain the prescribed level of husbandry practices set forth in this Rule. Such practices shall be under the supervision of an animal caretaker who has a background in animal husbandry or care.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984.

02 NCAC 52J .0210 VETERINARY CARE

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. March 23, 2009; January 1, 2005.